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No. 82-1401

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IAIN CALDER and JOHN SOUTH
Appellants,

v.

SHIRLEY JONES and MARTY INGELS,
Appellees.

ON APPEAL FROM THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT

Brief Amicus Curiae Of THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS In Support of Appellants' Jurisdictional Statement

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ON APPEAL FROM THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT

Motion of the

THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

For Leave To File A Brief Amicus Curiae In
Support of Appellants'
Jurisdictional Statement.

The Reporters Committee for Freedom of the Press hereby moves this Court for leave to file a brief as amicus curiae in support of the Statement As To Jurisdiction in this case. The consent of the Appellants has been obtained. [Appendix A] Appellees have objected to the timely filing under this Court's rules of this amicus brief on the basis of their belief that they will not have the opportunity to respond to the points raised. [Appendix B]

As an organization whose members are engaged in the gathering and dissemination of news reports concerning matters of public interest, movant believes that the ability of its members to serve the public will be greatly encumbered by the decision below.

Movant believes that its brief amicus curiae will aid this Court by (1) clarifying the far-reaching ramifications of the California Court of Appeal decision, (2) describing how this decision, if permitted to stand, will be detrimental to the First Amendment rights of the news media and the public, and (3) elucidating why the decision below is flatly inconsistent with

jurisdictional principles established by this Court over the past four decades and is in conflict with numerous other state and federal lower court rulings.

Accordingly, movant respectfully requests this Court to grant leave to file its accompanying Brief in Support of Appellants' Jurisdictional Statement.

Respectfully submitted,

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QUESTIONS PRESENTED

Whether it is permissible under the First and Fourteenth Amendments for a Distant State court in whose jurisdiction an allegedly libelous publication has circulated to assert personal jurisdiction in a libel case:

(a) over a non-resident reporter whose only contacts with the Distant State were several newsgathering telephone calls and possibly one trip; and,

(b) over a non-resident editor whose only contact with the Distant State was general supervision over newsgathering.

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Brief Amicus Curiae Of

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

In Support of Appellants' Jurisdictional Statement

INTEREST OF AMICUS CURIAE

The Reporters Committee for Freedom of the Press is dedicated to defending through the press the First Amendment and the Freedom of Information interests of the public in knowing about the operation of government. The Reporters Committee is a voluntary, unincorporated association of working reporters and editors, which has provided representation, legal guidance and research in virtually every major press freedoms case that has been litigated since 1970.

In the area of libel, notably, this amicus has appeared before this Court in Herbert v. Lando, 441 U.S. 153 (1979). It has appeared in other recent cases involving challenges to the rights of reporters, including:

Nebraska Press Ass'n. v. Stuart, 427 U.S. 539 (1976);
Zurcher v. Stanford Daily, 436 U.S. 547 (1978);
Gannett Co. v. DePasquale, 443 U.S. 368 (1979);
Richmond Newspapers Inc. v. Virginia, 448 U.S. 555 (1980);

Chandler v. Florida, 449 U.S. 460 (1981);
Department of State v. Washington Post, 456 U.S. 595 (1982);
FBI v. Abramson, 456 U.S. 615 (1982); and
Globe Newspaper v. Superior Court, 102 S.Ct. 2613 (1982)

As working reporters, our interest in this case is in protecting the ability of journalists to gather news in distant states without fear that they will be forced to defend themselves in libel suits when they have no significant contacts with the jurisdictions in which the suits are brought.

STATEMENT OF THE FACTS

Amicus adopts the appellants' statement of the facts and summarizes them as follows:

Appellees Shirley Jones, a professional entertainer, and Marty Ingels, an entertainment agent and broker, both California residents, brought suit for libel and related claims arising from publication of an article in the October 9, 1979, issue of the National Enquirer circulated in California.

The story included reports that Ingels "has terrorized his staff" and that Jones "has been driven to drink by [Ingels'] bizarre behavior."

Named as defendants were National Enquirer, Inc., a Florida corporation; its local distributing company; Appellant Iain Calder, president and editor of the Enquirer; and Appellant John South, the reporter who wrote the article.

The Enquirer and its distributing company are not parties to this appeal. They have

not contested the court's assertion of jurisdiction over them.

Appellants Calder and South are both Florida residents. Neither maintains an office, residence or a bank account in California.

During the four years prior to publication of the article in question, Appellant Calder traveled to California once, on a brief pleasure trip. As editor, Calder reviewed page proofs of the October 9, 1979, edition. He did not directly supervise investigation or writing of South's article. Calder's supervisory services were rendered in his business office in Florida.

Over the same four year period, Appellant South went to California about twenty times to gather news for the Enquirer. There is a dispute between the Appellees and the Appellants as to whether one of these trips was in connection with the story at issue.

The Appellants maintain that Mr. South made three telephone calls to sources in California in an unsuccessful attempt to gather information for the story upon which Ingels and Jones sued. A fourth was placed

to Appellee Ingels. Mr. South read the article to Ingels over the phone before it was published so that Ingels might have the opportunity to respond to it. All of the calls were placed from Mr. South's Florida office.

Appellants appeared specially in California Superior Court for the County of Los Angeles to contest the state's exercise of "long arm" jurisdiction over them.

The statute, Cal. Civ. Proc. Code sec. 410.10, allows California courts to assert jurisdiction to the extent permitted by the United States Constitution.

The Superior Court quashed service of process on Appellants. It held, among other things, that the First Amendment interests in this case made it unfair and unreasonable under International Shoe Co. v. Washington, 326 U.S. 310 (1945), to assert jurisdiction. (See Appendix C of Appellant's Jurisdictional Statement).

The California Court of Appeal (2nd Dist.) reversed, ruling that a court cannot consider First Amendment interests in deciding whether to assert personal

jurisdiction over a non-resident editor or reporter. It held that a California court could assert personal jurisdiction over these non-residents under the statute because they had used their home base in Florida to commit the intentional tort of libel in California. (See Appendix A of Appellant's Jurisdictional Statement).

The Court of Appeal further held that Appellant South's one call from Florida to Respondent Ingels for a reaction to the story was, in itself, a sufficient "minimum contact" with the state to support the assertion of personal jurisdiction under International Shoe, supra.

Appellants petitioned the California Supreme Court, which denied hearing. They then filed a timely appeal with this Court.

ARGUMENT

I. INTRODUCTION.

This is a case of first impression raising the question of whether a distant state where a publication has circulated has unconstitutionally applied its "long-arm" jurisdiction statute to a non-resident reporter and editor. This Court has jurisdiction under 28 U.S.C. 1257(2) to decide this matter because it calls into question application of state law in a manner that abridges a right protected by the U.S. Constitution.

There is a significant split among the federal circuits and the courts of some states concerning the degree to which the First Amendment should be considered in determining whether an assertion of personal jurisdiction comports with the "fair play and substantial justice" test established by this Court. This case presents an opportunity for the Court to resolve this conflict.

If this Court permits the decision of the California Court of Appeal to stand, many non-resident reporters and editors will live under the perpetual threat of lawsuits filed against them in distant states based upon any

of their stories appearing in a publication that circulates in that distant state. They will have to live with the possibility that they could be forced to defend themselves at great expense far from where they live and work.

Amicus fully supports the jurisdictional statement of Appellants.*/

II. CALIFORNIA'S ASSERTION OF JURISDICTION OVER A NON-RESIDENT REPORTER AND A NON-RESIDENT EDITOR IN THIS LIBEL CASE VIOLATES DUE PROCESS PRINCIPLES ESTABLISHED BY THIS COURT.

Under the jurisdictional doctrines established by this Court California has no basis to assert jurisdiction over the Appellants.

In International Shoe Co. v. Washington, 326 U.S. 310 (1945), this Court held that due process principles forbid a state from

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*/ Attorneys for Amicus were assisted in preparation of this brief by law students Robert Dato of the University of San Diego School of Law, and Gini Nelson of the George Washington University National Law Center.

asserting personal jurisdiction over a non-resident unless the non-resident has certain "minimum contacts" with that state.

A rule of reasonableness has evolved for assessing a party's contacts with the forum. Under this rule, courts must consider whether a party has purposely availed itself of a state's protection, Hanson v. Denckla, 357 U.S. 235 (1958); continuously or systematically conducted business activities in the state, International Shoe, supra; or directly contracted with a state resident, McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

A synthesis of this Court's decisions leads to the conclusion that a substantial presence in the state is required. The National Enquirer, the publication involved in this libel case, has conceded that it is present in California and has submitted to that state's jurisdiction. It distributes more than 30 million copies in California a year. It solicits advertising and circulation in the state.

In contrast, the editor and reporter involved here never had the requisite minimum presence in the state of California.

Appellant-Reporter made sporadic visits to California to gatner news over a four-year period, yet none of these visits was related to the preparation of the story which Appellee's claim caused them injury. Appellant South's only contacts with California regarding this article were four telephone calls placed from Florida, one of them to Appellee Ingels seeking a response.

Appellant-Editor had no contacts with California in connection with the story.

Because neither Appellant had sufficient "minimum contacts" with California, that state's exercise of jurisdiction in this case violates tne due process guarantees of the 14th Amendment.

III. THIS COURT SHOULD RESOLVE A SIGNIFICANT DIVISION AMONG STATE AND FEDERAL COURTS BY REQUIRING THAT FIRST AMENDMENT INTERESTS BE CONSIDERED BEFORE PERSONAL JURISDICTION IS EXERCISED OVER NON-RESIDENT REPORTERS AND EDITORS.

By agreeing to review this case -- either by noting probable jurisdiction or by granting certiorari -- this Court can resolve a

considerable split of authority concerning the relevance of First Amendment interests in assessing whether a court's assertion of personal jurisdiction is fair and reasonable. Amicus believes that even if this Court finds that Appellants' activities amount to "minimum contacts," the Court of Appeal ruling should be overturned because First Amendment considerations make it unfair and unreasonable for a California court to assert jurisdiction in this case.

A state may not assert jurisdiction beyond that which is permitted by the United States Constitution. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). In International Shoe, supra, 326 U.S. at 316, this Court held that the maintenance of a suit over a non-resident defendant must "not offend 'traditional notions of fair play and substantial justice'" (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). It must be reasonable to require the non-resident to defend the suit, International Shoe, supra at 317. Reasonableness "will in an appropriate case be considered in light of other relevant factors . . . " World-Wide Volkswagen Corp., supra, at 292.

The First Amendment has been considered to be a significant factor in determining jurisdiction in a majority of the Circuits that have examined this question. These courts point to the chilling effect of exposing the news media to potential liability in a distant state where they have little or no contact. See, e.g., New York Times Co. v. Connor, 365 F.2d 567, 572-73 (5th Cir. 1966).

The minority believes First Amendment interests are better asserted once the court assumes jurisdiction. See, e.g., Anselmi v. Denver Post, Inc., 552 F.2d 316, 324 (10th Cir. 1977).[1/]

Amicus respectfully requests this Court to resolve the split in the circuits by requiring that the First Amendment interests be considered before a court asserts personal jurisdiction. The prior decisions of this Court clearly require consideration of First Amendment principles.

1/For a complete listing of the current split of authority on this issue see Appellants' Statement as to Jurisdiction at 12.

This Court has recognized that newsgathering is an activity protected by the First Amendment. In Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980), in which this newsgathering right was held to outweigh the parties' interest in closing a criminal trial, Mr. Justice Stevens wrote, "arbitrary interference with access to important information is an abridgment of the freedoms of speech and of the press protected by the First Amendment." Id. at 583. And in Branzburg v. Hayes, 408 U.S. 665, 681 (1972), this Court declared that "without some protection for seeking out the news, freedom of the press could be eviscerated."

This Court has repeatedly held that the First Amendment must be considered before the interests it protects are abridged. Richmond Newspapers, Inc. v. Virginia, supra. Consideration of these interests is required even if it is ultimately determined that they will not prevail in a given case. Zurcher v. Stanford Daily, 436 U.S. 547 (1978); Herbert v. Lando, 441 U.S. 153 (1979).

The California Court of Appeal's refusal to even consider these interests here,

therefore, runs counter to the rulings of this Court and a majority of jurisdictions that have addressed the issue.

If First Amendment interests are considered in this case, it is clear that the danger of exposing Appellants to potential liability far outweighs California's incidental interest in asserting jurisdiction over them.

California's concerns for providing a forum in which Appellees can litigate their claims can be served in this case without abridging Appellants' First Amendment rights. The National Enquirer has submitted to the jurisdiction of the state's courts. Therefore, this is not a case in which the plaintiff will be left without a defendant to satisfy any judgment that may be awarded.

On the other hand, damage to the First Amendment will be great if the Court of Appeal decision is allowed to stand, because it will subject thousands of reporters and editors to the possiblity of suit far from their homes.

Amicus believes that the most disturbing aspect of the California Court of Appeal's opinion is the holding that jurisdiction could be asserted over Appellant South merely

because he placed a single telephone call from Florida to Appellee Ingels in California. His purpose in making the call was to get Ingels' response to the article. Appellant South was attempting to write a balanced story from which readers could formulate their own opinions.

The telephone is an important tool used by reporters in gathering news. If the simple act of making a telephone call could subject them to great legal expense reporters would be hampered in their ability to cover stories of major public importance far from their offices.

Editors will hesitate to publish controversial stories if the mere fact that their publications circulate in a distant state will establish a basis for personal jurisdiction over them.

If California is free to exercise jurisdiction in this case, other states with equally broad "long arm" jurisdiction statutes will be encouraged to do the same. Consequently, the publication of any story by any nationally distributed newspaper or magazine could subject the reporter and editor to the jurisdiction of any state in which the publication was circulated. Distant states

could easily impose substantial legal expenses on reporters and editors, who would be forced to travel great distances to defend themselves. A libel plaintiff need only to show that the reporter made a single telephone call to a source in California to obtain information for the story or that the editor supervised some aspect of the development of the story..

If the California Court of Appeal decision is allowed to stand, the public -- the main beneficiary of the First Amendment -- will suffer because it will be deprived of the publication of truthful, balanced news. Few reporters or editors would be willing to risk the preparation of controversial articles about events in distant states. Likewise, reporters and editors will actually be discouraged from presenting fair and balanced stories if the price of such "balance" is submission to a distant state's jurisdiction and the resulting expense of defending the libel action.

A news organization may decide that it is more prudent not to circulate in a state which forces its employees to appear personally and to defend themselves at great expense. If, in response to repeated application of the Court

of Appeal decision, publishers withdraw from California, that state's residents will be deprived of substantial sources of information.

If this Court were to overturn the Court of Appeal decision, it would admittedly place some burden on libel plaintiffs who decide that they wish to sue the non-resident reporter or editor personally, in addition to the publishing corporation. However, this is a reasonable burden compared to the extreme burdens this exercise of long-arm jurisdiction would place on the First Amendment interests of the press, as well as the availability of information to the public.

Therefore, Amicus urges this Court to resolve the split among the federal and state courts by requiring that these significant First Amendment interests be considered by courts prior to exercising jurisdiction over non-resident reporters and editors.

CONCLUSION

Amicus contends that California's application of its "long-arm" jurisdiction statute unconstitutionally interferes with an activity protected by the First Amendment. There is a significant split among the federal circuit courts and some state courts concerning the weight to be given the First Amendment in deciding whether the assertion of jurisdiction is proper. This Court should require that the First Amendment be given considerable weight in deciding whether jurisdiction should be asserted over non-resident reporters or editors, in order to prevent serious harm to the newsgathering process as well as to the flow of information to the public.

For these reasons, Amicus requests that this Court note probable jurisdiction or, in

the alternative, grant Appellants' request for a writ of certiorari.

Respectfully submitted,

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APPENDIX A

WILLIAMS & CONNOLLY
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Washington, D.C. 20006

March 21, 1983

Ms. Judy D. Lynch
Reporters Committee
for Freedom of the Press
Suite 300
800 18th Street, N.W.
Washington, D.C. 20006

Re: Iain Calder and John South v. Shirley Jones and Marty Ingels

Dear Ms. Lynch:

On behalf of Appellants Iain Calder and John South, we consent to the filing of a brief of the Reporters Committee for Freedom of the Press as amicus curiae.

Yours truly,

s/F. Lane Heard III

APPENDIX B

HAYES & HUME
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Beverly Hills, California 90212-2473

March 18, 1983

Reporters Committee for the
Freedom of the Press
Room 350
800 18th Street, N.W.
Washington, D.C. 20006

Attention: Jack Landau

Re: Iain Calder and John South v. Shirley Jones and Marty Ingels; United States Supreme Court No. 82-1401

Dear Mr. Landau:

This letter will confirm that Appellees Shirley Jones and Marty Ingels have been advised of the desire of the Reporters Committee for the Freedom of the Press to file a brief amicus curiae in support of the Statement of Jurisdiction filed by Appellants Iain Calder and John South in the Supreme Court on February 22, 1983.

Appellees would have had no objection to the filing of such a brief at an earlier time. However, they must now point out for the record that the request comes at a time when Appellees' Motion to Dismiss or Affirm directed to Appellants' Statement is at the

printers for final printing prior to filing. Under these circumstances, Appellees are unable to respond to any points which may be raised in the amicus brief which have not been addressed by Appellants, although the Committee has had since February 22, 1983, to consider the matter, and prepare and file such a brief. Accordingly, by this letter we formally object to the filing of the brief.

Very truly yours,

s/Richard P. Towne
Counsel for Appellants